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SuperTrapp Industries, Inc. a Wholly Owned Subsidiary of Dreison International, Inc. and (UNITE!) Union of Needletrades, Industrial & Textile Employees, Cleveland Joint Board. Case 8-CA-30695-2

July 27, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on May 3, 1999,¹ the General Counsel of the National Labor Relations Board issued a complaint on May 24, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 8-RC-15697. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint and submitting defenses.

On June 21, 1999, the General Counsel filed a Motion for Summary Judgment. On June 23, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the conduct of the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

¹ Although the Respondent's answer states that the Respondent is without knowledge or information sufficient to form a belief as to the truth of the complaint allegations concerning the filing and service of the charge, the Respondent avers that it received a copy of the charge on or about the date set forth in complaint. Furthermore, a copy of the charge and affidavit of service are attached to the General Counsel's motion. The Respondent did not contest the authenticity of these documents in its response.

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Ohio corporation, with an office and place of business in Cleveland, Ohio, has been engaged in the manufacture and nonretail sale of parts, including mufflers, for motorcycles, personal watercraft, automobiles, and trucks.² Annually, the Respondent, in conducting its business operations described above, sells and ships goods and materials valued in excess of \$50,000 directly to points located outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held March 20, 1998, the Union was certified on April 12, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by SuperTrapp Industries, Inc. at its 4540 West 160th Street, Cleveland, Ohio facility, including material handlers, shipping and receiving, data entry, inspectors, machine maintenance, tool and die, janitorial, assembly, including stuffing and painting, machine operator, including polishing, welders, lead persons, quality control, and R & D technicians, but excluding all office clerical employees, inside sales employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since April 14, 1999, the Union, by letter, has requested the Respondent to bargain, and since April 19, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

² We have adopted the Respondent's description of its business. The disagreement between the complaint allegations as to the nature of the Respondent's business and the Respondent's answer is negligible and does not present an issue warranting a hearing. We also note that the Stipulated Election Agreement in the underlying representation case states that the Respondent is engaged in the manufacture of automobile parts.

CONCLUSION OF LAW

By refusing on and after April 19, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, SuperTrapp Industries, Inc. a wholly owned subsidiary of Dreison International, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with (Unite!) Union of Needletrades, Industrial & Textile Employees, Cleveland Joint Board as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by SuperTrapp Industries, Inc. at its 4540 West 160th Street, Cleveland, Ohio facility, including material handlers, shipping and receiving, data entry, inspectors, machine maintenance, tool and die, janitorial, assembly, including stuffing and painting, machine operator, including polishing, welders, lead persons, quality control, and R & D technicians, but excluding all office clerical employees, inside sales employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 19, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 27, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with (Unite!) Union of Needletrades, Industrial & Textile Employees, Cleveland Joint Board as the exclusive bargaining representative of the employees in the bargaining unit.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our 4540 West 160th Street, Cleveland, Ohio facility, including material handlers, shipping and re-

ceiving, data entry, inspectors, machine maintenance, tool and die, janitorial, assembly, including stuffing and painting, machine operator, including polishing, welders, lead persons, quality control, and R & D technicians, but excluding all office clerical employees, inside sales employees, professional employees, guards and supervisors as defined in the Act.

SUPERTRAPP INDUSTRIES, INC. A WHOLLY OWNED SUBSIDIARY OF DREISON INTERNATIONAL, INC.